IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11755 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVANIA VIBHAG YUVAK MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11755 of 2002

MR MUKESH R SHAH for Petitioner No. 1

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/12/2002

ORAL JUDGEMENT

Rule. Ms Manisha Lavkumar, learned AGP waives service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the decision dated 4.11.2002 of

the State Government in the Education Department rejecting the petitioner's application for reconsideration of the previous decision not to grant the petitioner's application for permission to establish a new higher secondary school at village Sevani in Devgadh Bariya of Dahod District. Earlier the State Government had vide its letter dated 25.2.2002 rejected the application as communicated by the Commissioner of Schools and Mid-day Meals on 7.3.2002 (Annexure :C: pg. 26) which came to be confirmed by the State Government by the aforesaid letter dated 4.11.2002 (Annexure "D" pg. 27).

3. Mr MR Shah, learned counsel for the petitioner submits that the petitioner-institution is desirous of establishing a higher secondary school in Devgadh Bariya taluka of Dahod district which is admittedly a tribal area and that within a distance of 13 kms. from where the school is to be opened, there is no other higher secondary school. It is further submitted that the petitioner complies with all the requisite criteria and the petitioner's name was also recommended by the Committee constituted by the Commissioner of Schools and Mid-day Meals and also by the Commissioner, but the State Government has without any reasons rejected the petitioner's application.

It is also submitted that the Government has granted the applications of as may as 47 other institutions as per the order dated 30.3.2002 (Annexure "E") but the petitioner's application is not granted.

4. Ms Manisha Lavkumar, learned AGP appearing for the respondent authorities has submitted that the State Government has taken the decision in the facts and circumstances of the case and that merely because 47 such applications have been granted cannot be a ground for challenging the decision in case of the petitioner-institution as each application is to be decided on merits of that particular application.

5. However, the Court does not propose to go into the aforesaid controversy for the simple reason that the petition deserves to be allowed because no authority has indicated any reason in the impugned orders or communications for rejecting the petitioner's application. The impugned decisions dated 25.2.2002 and 7.3.2002 as well as the letter dated 4.11.2002 are, therefore, quashed and set aside with a direction to the State Government to reconsider the matter after giving the petitioner an opportunity of being heard. In case it

is found that the petitioner's application deserves to be granted, the same shall be considered on the same basis on which the applications of the said schools have been granted by order dated 30.3.2002 as the petitioner-institution had applied alongwith some of those institutions. The aforesaid exercise shall be undertaken within a period of six weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-